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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 606

VIKING PUMP COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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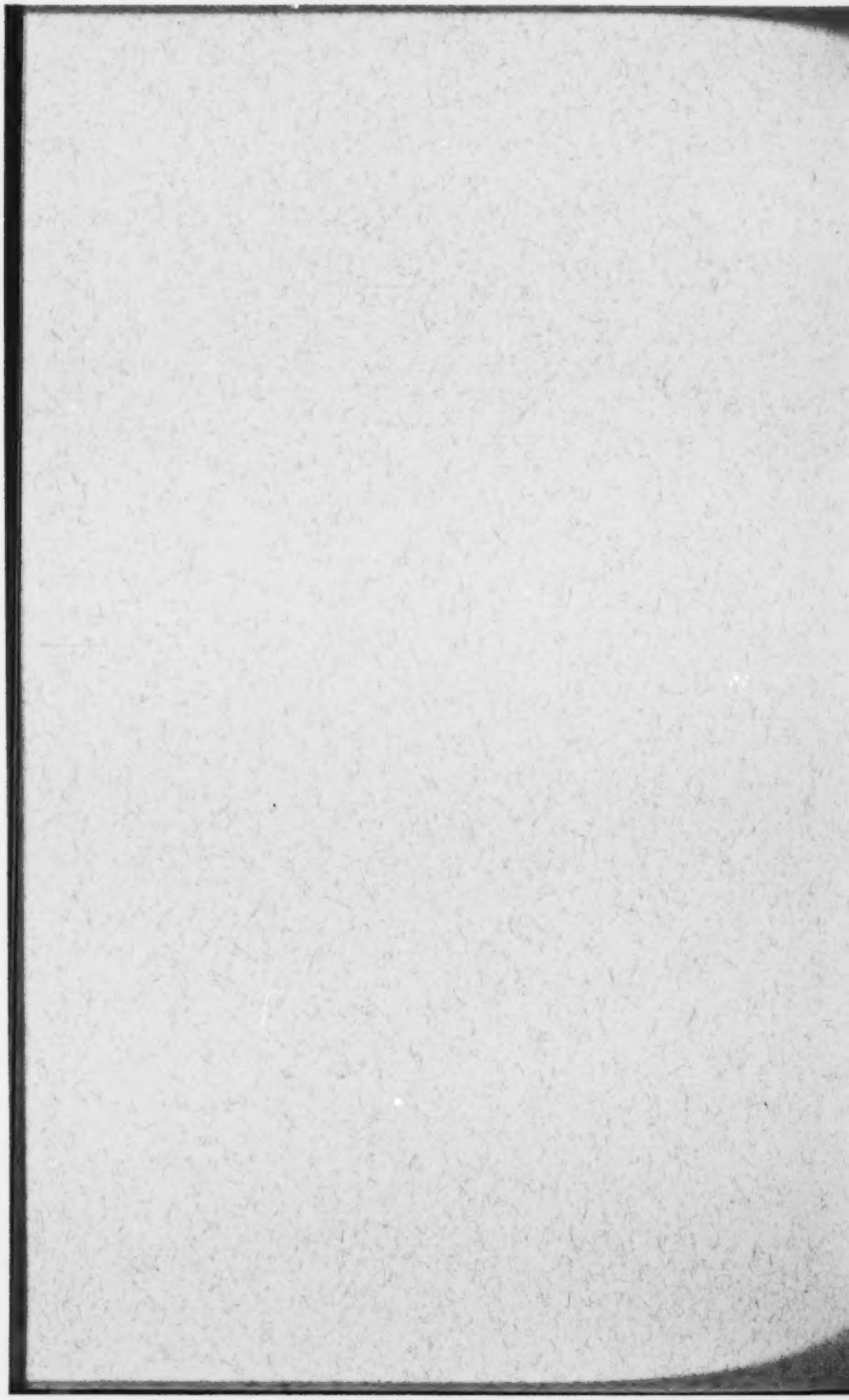

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Statement	1
Basis of jurisdiction	2
The questions presented and the reasons relied on for the allowance of the writ	3
Brief in support of petition for writ of certiorari	7
The opinions below	7
Jurisdiction	8
Statement of the case	8
Specification of the errors to be urged	8
Argument	9
Reinstatement of Harold Poulson	14
Reinstatement of Ferris Aldrich	15
Reinstatement of Lloyd L. Siglin	17
Reimbursement of Harold Poulson	17
Reimbursement of Ferris Aldrich	17
Reimbursement of Lloyd L. Siglin	17
Deductions of relief work receipts from reimbursement payments	18
Appendix	20

Table of Cases Cited.

Consolidated Edison Co. v. *National Labor Relations Board,* 305 U. S. 197, 59 Sup. Ct. 206, 83 L. Ed. 126	9, 11
Cupples Company Mfrs. v. *National Labor Relations Board,* 106 F. (2d) 100	10
Eastwood-Neally Corporation v. *International Association of Machinists,* 124 N. J. E. 274, 1 Atl. (2d) 477	11
Ford Motor Co. v. *National Labor Relations Board,* 305 U. S. 364, 59 Sup. Ct. 80, 83 L. Ed. 221	16
National Labor Relations Board v. *Empire F. Co.,* 107 F. (2d) 92	3, 9, 10, 15

Page

National Labor Relations Board v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 57 Sup. Ct. 615, 81 L. Ed. 893 8
National Labor Relations Board v. *Thompson Products*, 97 F. (2d) 13 10
National Labor Relations Board v. *Sands Mfg. Co.*, 306 U. S. 322, 59 Sup. Ct. 508, 83 L. Ed. 682 10
National Labor Relations Board v. *Union Pacific Stages*, 99 F. (2d) 153 10
Republic Steel Corporatoin v. *National Labor Relations Board*, 85 L. Ed. 1 18

STATUTES CITED.

Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151 et seq. 2, 20
Judicial Code, Sec. 240 (28 U. S. C. 347) 2, 8

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Viking Pump Company, respectfully prays that a writ of certiorari be issued to review the decree of the United States Circuit Court of Appeals for the Eighth Circuit, enforcing an order of the National Labor Relations Board, entered July 29, 1940 (R. 625); rehearing denied September 9, 1940 (R. 626).

Statement.

This is an original proceeding filed by the National Labor Relations Board to enforce an order issued by it against the Viking Pump Company on July 13th, 1939.

In the charges filed by Lodge 1683, Amalgamated Association of Iron, Steel & Tin Workers of North America,

through the Steel Workers Organizing Committee, affiliated with the Committee for Industrial Organization, and in the complaint issued by the National Labor Relations Board, the Viking Pump Company was charged with unfair labor practices, in the illegal discharge of certain employees because of union activity, and for suggesting the formation of a bargaining committee composed solely of the Company's employees, and by other acts interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Statute 449, 29 U. S. C. 151, *et seq.*).

The National Labor Relations Board in its order of July 13, 1939, ordered the Company to cease and desist from interfering with and discouraging its employees in their right to form or join a labor organization. Also ordered the reinstatement of three former employees, Harold Paulson, Ferris Aldrich and Lloyd L. Siglin, with back pay. The Company failed to comply with the order of the Board. Thereupon the Board petitioned the United States Circuit Court of Appeals for the Eighth Circuit for an order of enforcement. Issue was joined by the Company, and the matter was heard and determined by the court, and its decision rendered, ordering compliance on the part of the Company with the Board's order.

A petition for rehearing in said court having been denied, the Company brings to this Court its petition for the issuance of a writ of certiorari herein.

II.

Basis of Jurisdiction of This Court.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347).

Reasons Relied On for the Allowance of the Writ.

(1) The decision of said Circuit Court of Appeals as to the discharge of Harold Poulson and Ferris Aldrich is in conflict with the decision of the Circuit Court of Appeals of the Sixth Circuit, in a similar matter, in the case of *National Labor Relations Board* v. *Empire Furniture Corporation* (6th Cir.), 107 F. (2d) 92, at 95.

(2) The decision of said Circuit Court of Appeals, with reference to the discharge of Poulson and Aldrich, is erroneous, and completely ignores the evidence as to the true reasons for the discharge of said persons, viz: First: Insubordination and refusal to follow the directions and obey the orders of their superiors; and, Second: Abuse, coercion and intimidation of their fellow employees in their attempts to compel them by force to join the Union.

Discharge for either or both of said reasons did not constitute an unfair labor practice on the part of the Company.

(3) The Circuit Court of Appeals erred with reference to the alleged discharge of Lloyd Siglin, *as he was not discharged.*

(4) The decision of said Circuit Court of Appeals with reference to the discharge of Poulson, Aldrich and Siglin, on the testimony adduced, by holding that they were discharged for engaging in permissible union activity in the plant during working hours, so far departs from the accepted and usual course of judicial proceedings, as to call for this Court's power of supervision.

(5) The decision of said Circuit Court of Appeals is contrary to the evidence in the case, and is not sustained by the substantial, competent, material and admissible evidence in the case.

(6) The decision of said Circuit Court of Appeals to the effect that the appointment of a committee by the employees to confer with the management concerning hours and wages, was done for the purpose of circumventing or interfering with the formation or functioning of the Union, is erroneous, and is not supported by the substantial, competent, relevant and admissible testimony.

(7) The decision of said Circuit Court of Appeals that the voluntary formation of the committee of employees to confer with the management on the matter of wages and hours was not a mere temporary expedient, to allay the existing unrest, hatred, ill will and turmoil in the plant, is erroneous, and is not sustained by the substantial, competent, relevant and admissible testimony. And even though the court should determine that the meeting was instigated by the management, for the purpose of composing the differences between the divergent elements of the employees, to allow normal production to be resumed in the plant, would not constitute an unfair labor practice.

(8) The decision of said Circuit Court of Appeals that the Company interfered with the right of the employees to form and join the union of their choice, is not sustained by the substantial, competent, relevant and admissible evidence, but is based on mere hearsay, rumor and conjecture.

(9) The decision of said Circuit Court of Appeals in sustaining the Board's order that the Company should reimburse the employees, Poulson, Aldrich and Siglin for wages lost during the time they were out of the Company's service, is erroneous, and completely ignores the true reasons for their discharge.

(10) The decision of said Circuit Court of Appeals sustaining the Board's order with reference to the deduction of monies received by said employees for work performed

on Federal, State, county, municipal or other work relief projects, and to pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal or other government or governments, which supplied the funds for said work relief projects, is erroneous and not in accordance with applicable law.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit should be granted.

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